

No. 17,317

United States Court of Appeals
For the Ninth Circuit

LAVERE REDFIELD,

VS.

UNITED STATES OF AMERICA,

Appellant,

Appellee.

Appeal from the United States District Court
for the District of Nevada

APPELLANT'S PETITION FOR A REHEARING.

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To the Honorable Frederick G. Hamley, Oliver D. Hamlin and M. Oliver Koelsch, Judges of the United States Court of Appeals for the Ninth Circuit:

COMES NOW the Appellant in the above-entitled case and respectfully petitions the Court to grant a rehearing.

I

The grounds upon which Appellant respectfully requests a rehearing are that the Appellant was denied a fair and impartial trial to which our law entitles him by virtue of the unwarranted participation of the Trial Judge in the proceedings. In support of

this proposition, the Court's attention is directed to the argument on this point in Appellant's Opening Brief and Appellant's Reply Brief. The entire transcript of testimony taken at the trial of the proceedings is replete with examples of the Trial Judge harassing and belittling Appellant in his attempt to present his defense. The Trial Judge harassed and belittled Appellant repeatedly in the presence of the jury.

Appellant does not present this petition for rehearing for the purpose of delay. To the contrary, Appellant sincerely believes that the recent case of *United States of America v. Max T. Salazar*, 293 Fed. 2d 442, decided August 7, 1961 but not reported until after this Court's decision in the case at bar, is worthy of this Court's consideration upon rehearing. In the *Salazar* case, the United States Court of Appeals for the Second Circuit reversed the judgment of conviction in the Trial Court because the Court of Appeals observed that the unwarranted participation of the Trial Judge deprived the defendant of the fair and impartial trial to which he is entitled under our law. The Court of Appeals for the Second Circuit said:

"There was apparent proof of Salazar's guilt, but we must reverse the conviction because certain remarks and questions of the District Judge were in combined effect, so clearly prejudicial that we cannot say that the defendant received a fair trial to which he was entitled."

In the *Salazar* case, the defendant was represented by counsel. In the case at bar, the Appellant was

without counsel. The transcript of testimony taken in the case at bar, particularly those portions cited in Appellant's Opening Brief in support of this proposition, are infinitely more prejudicial than the colloquy carried on by the Judge and the defendant in the *Salazar* case. In the case at bar during Appellant's closing argument to the jury, the Court made the following statement to the jury (Tr. Vol. VIII, page 2003, lines 24, 25; page 2004, lines 1, 2, 3):

“The Court. Ladies and gentlemen of the jury, you are admonished that there is nothing in the record on the part of the defendant as to his having checked any statistical records to arrive at the cost as to the purchase of his stock. There has been no evidence here on the part of the defendant at all.”

The transcript of testimony indicates that the Appellant had called character witnesses and his cross-examination of government witnesses certainly constituted evidence in the case at bar, yet the Court admonished the jury that there was no evidence in the case on the part of the Appellant at all. The treatment accorded Appellant throughout the trial by the Trial Court in the case at bar certainly deprived the Appellant of a fair and impartial trial when viewed in the light of the cases cited in support of this proposition in his Opening Brief, his Reply Brief and the *Salazar* case cited in this petition for rehearing.

Rehearing is not sought in respect to any question other than the question of whether or not Appellant

was denied a fair and impartial trial in the Court below by virtue of the prejudicial nature of the treatment of Appellant by the Trial Court.

CONCLUSION

Two things are respectfully requested:

1. That a rehearing of this case be granted limited to the proposition of whether or not the Appellant received a fair and impartial trial.
2. That this Court give consideration to Rule 23 of the United States Court of Appeals for the Ninth Circuit by granting a hearing en banc.

Dated, Reno, Nevada,
November 3, 1961.

GRUBIC, DRENDEL & BRADLEY,
By WILLIAM O. BRADLEY,
*Attorneys for Appellant
and Petitioner.*

CERTIFICATE OF COUNSEL

I hereby certify that I am of counsel for appellant and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, Reno, Nevada,
November 3, 1961.

WILLIAM O. BRADLEY,
*Of Counsel for Appellant
and Petitioner.*

